

County of Santa Clara

Consumer and Environmental Protection Agency

1553 Berger Drive
Building 1
San Jose, CA 95112
(408) 918-4600
www.CEPASCC.org



July 9, 2015

Mr. Bruce Wolfe, Executive Officer
San Francisco Bay Region
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: County of Santa Clara Comments on Tentative Order for the Reissuance of the
Municipal Regional Stormwater National Pollutant Discharge Elimination System
Permit

Dear Mr. Wolfe:

Thank you for the opportunity to comment on the Tentative Order (TO) for the reissuance of the Municipal Regional Stormwater Permit (MRP) dated May 11, 2015. The comments included herein have been prepared consistent with the direction of the Office of the County Executive.

The County of Santa Clara (County) is a co-permittee of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and has had a proactive stormwater pollution prevention and control program since the first countywide municipal stormwater permit was adopted in 1990. The County has been actively engaged in implementation of the current MRP, and continues to strive to protect and improve water quality within unincorporated Santa Clara County.

The County appreciates that the Water Board staff has worked closely with MRP stakeholders throughout the process of permit reissuance. However, there remain several areas of the permit that continue to cause concern to the County, and our comments on key areas of concern are as follows:

1. Green Infrastructure (Provision C.3) and PCB and Mercury (C.11/C.12)

The County of Santa Clara objects to certain mandates of the new Provision C.3 Green Infrastructure (GI) requirements. In particular, the County objects to (1) the timeframe for GI planning and (2) the method for assessing the County's progress towards meeting PCB and Mercury Load reductions vis-a-vis the GI retrofit projects implemented. The County provided oral testimony at the June 10, 2015 Water Board Public Workshop regarding:

- The few redevelopment opportunity areas within unincorporated Santa Clara County where private development projects could make significant contributions towards the total area retrofitted with Green Infrastructure.
- The infrastructure managed by the County, such as hillside residential streets, freeway-like expressways and rural and semi-rural parklands may not provide good opportunities for GI retrofit projects, particularly those that would address Mercury and PCB sources as the TO envisions.

In addition to the oral testimony given, the County would further note that that the largest County facilities are located within the City of San José—not unincorporated Santa Clara County—and the TO provides no guidance as to whether the County or City would be credited for these retrofits. Such guidance is requested. The County believes it should receive credit for these facilities since they are County owned and operated facilities which are oftentimes exempt from the City’s building and land use authority.

a. *Green Infrastructure Planning*

Although opportunities are available to integrate GI objectives into the County’s various long-range capital and sustainability programs, retrofit projects under those programs would be implemented by the County and not the Water Board. These retrofit projects are projected to be constructed under long-term (e.g. ten year) capital funding cycles, and are further dependent on the availability of funding for long-term maintenance. The timeframes in the TO are simply unrealistic because developing a comprehensive GI Plan requires time and significant County resources. For example, the GI Plan framework has to be developed and approved by the Board of Supervisors within one year of the Permit effective date, which is unrealistic since numerous County agencies must be involved in evaluation of GI opportunities and amendment of capital plans and programs to include feasible components of GI. This planning work needs to be completed before consideration of a plan by the Board.

The Tentative Order must be revised to provide two years to complete and obtain governing body approval of the GI framework, and further revised to provide the entire permit term to complete the GI Plan. This will ensure the County and other permittees have the opportunity to conduct a thorough evaluation of GI opportunities; are able to properly vet potential GI projects with implementing departments, taxpayers/residents and elected officials; and have time to develop funding mechanisms to facilitate project implementation. The County does anticipate that a small number of GI pilot projects could be implemented as part of routine maintenance and rehabilitation projects during the time that a comprehensive GI Plan is being developed.

b. *Green Infrastructure and Mercury and PCB Reductions*

The TO incorrectly assumes reductions in Mercury and PCB loading based on projected rates of land redevelopment and permittee and private sector implementation of GI projects. However, as the Water Board is aware, implementation of the Green Street pilot projects mandated under the current MRP typically took three to five years from project inception to project completion. Consequently, the TO makes unrealistic projections with regard to the rate of GI implementation

during the permit term. Furthermore, the TO's assumed rates of redevelopment of "old urban" and "old industrial" land uses that would effectuate GI implementation and corresponding reductions in Mercury and PCBs fails to account for the diversity of land uses and development patterns of the individual permittees, and ignores the key fact that not every permittee has known Mercury and PCB-generating land uses within its jurisdiction. The TO imposes a vague and ambiguous path on the County's compliance with both Provision C.3 Green Infrastructure implementation and related C.11 Mercury and C.12 PCB reductions.

2. Trash (Provision C.10)

The County is diligently implementing the trash reduction measures identified in its February 2014 Long-Term Trash Reduction Plan and Assessment Strategy. To date, the County has spent over \$30,000 on small trash capture devices, and has planned for the installation of an additional \$1.3 million of trash capture devices over the next three years. The County is spending approximately \$450,000 in additional maintenance costs per year for enhanced street sweeping to meet the MRP's trash reduction requirements. The County also spends tens of thousands of dollars annually collecting and disposing of trash and other debris dumped in the unincorporated area of the South Bay.

Several new requirements in Provision C.10 will impose difficult, infeasible or counter-productive requirements regarding trash reductions. Specific C.10 elements that must be eliminated from the final MRP include:

- **Provision C.10.a (Trash Reduction Requirements).** The TO carries over from the MRP a requirement for a 70% trash load reduction by June 2017. While successfully meeting the requirement for a 40% trash load reduction by 2014, the County gained valuable experience in installing trash capture devices and implementing operational trash controls. Implementation of additional trash reduction actions to achieve the ultimate goal of no trash impairment by 2022 will require significantly more funding than that required for the initial reduction of 40%, and may require the County to try new approaches to successfully meet the 2022 requirements. As such, the 70% reduction by 2017 requirement represents an arbitrary milestone that assumes the implementation of trash reduction actions is linear. This requirement will impair the County's ability to evaluate what trash controls work best, and to adapt its Long-Term Trash Reduction Plan to meet the 2022 requirements in the most cost effective manner. The requirements for a 70% trash load reduction by June 2017 should be eliminated.
- **Provision C.10.a.ii.b (Trash Generation Area Management)** requires Permittees to map and assess all private drainages that are 5,000 square feet and greater, determine the level of trash present in these areas, and potentially require installation of trash screens on private storm drain inlets. This will require extensive staff time to complete mapping that has no apparent value because it does not provide a direct water quality benefit. If the intent of this section is to identify privately-owned properties that are contributing significant amounts of trash to the storm drain system via on-site inlets, then that objective can be addressed through existing commercial and industrial inspection programs. Furthermore, it is questionable whether the County has the legal authority to

compel private property owners to retrofit storm drain inlets with trash screens and this requirement should be eliminated.

The County requests that the following **changes** be made to the MRP to allow the County and other permittees greater opportunities to meet trash reduction requirements:

- Both Green Infrastructure and Low Impact Development (LID) stormwater treatment measures should be identified as Full Trash Capture Systems. The TO implies that C.3-compliant LID features would have to be fitted (or retrofitted) with trash capture screens to be considered Full Trash Capture Systems. The TO should be revised to clarify that previously-installed C.3 treatment measures and Green Infrastructure elements are Full Trash Capture Systems.
- The TO proposes a maximum trash load reduction offset credit of ten percent for direct trash discharge controls. The County regularly removes trash from areas where illegal dumping occurs in or along creeks. Items removed include both large items such as appliances, car parts, furniture, household and commercial trash, and hazardous waste. A substantial amount of trash is prevented from entering local creeks through these efforts, and appropriate offset credits (e.g. 25%) should be given to permittees to encourage the continued investment in direct trash control. The TO should be revised to provide an offset credit of up to 25% with documentation of the direct discharge control.

3. Conclusion

In addition to the specific comments above, the County incorporates by reference comments submitted by the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP), and by the Bay Area Stormwater Management Agencies Association (BASMAA).

Sincerely,



Amy L. Brown, Director
Consumer and Environmental Protection Agency